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SUPREME COURT OF THE UNITED STATES.

No. 90.

JOHN SIGERSON, PL'FF IN ER.,

vs.

EDWARD MATHEWS.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MISSOURI.

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Pleas before the Hon. Robert W. Wells, one of the judges of the circuit court of the United States for the eighth circuit and Missouri district, on Friday, the tenth day of October, in the year of our Lord eighteen hundred and fifty-six.

Style. Preamble.

EDWARD MATHEWS, plaintiff,
agst.
JOHN SIGERSON, defendant. } Assumpsit.

Be it remembered that on the tenth day of March, in the year of our Lord eighteen hundred and fifty-six, comes the plaintiff, by his attorney, and files in the office of the clerk of the United States circuit court for Missouri district his declaration against the defendant, as follows, viz:

UNITED STATES OF AMERICA,
District of Missouri.

IN THE UNITED STATES CIRCUIT COURT FOR MISSOURI.

April term, 1856.

Declaration.

Edward Mathews, who is a citizen of the State of Louisiana, complains of John Sigerson, who is a citizen of the State of Missouri, of a plea of trespass on the case and promises: For that whereas, one James Sigerson, who was a citizen of the State of Missouri, (now deceased) on the tenth day of March, 1852, at St. Louis, in the district aforesaid, made his certain promissory negotiable note in writing of that date, which now here to the court is produced and shown, and thereby promised to pay to the order of the defendant, two years after said date, the sum of two thousand dollars for value received, without defalcation or discount, negotiable and payable at Bank of the State of Missouri, with interest from date, at the rate of six per cent. per annum, and delivered said note to the defendant, who then and there, for value, endorsed and delivered the same to the plaintiff; and when said note became due and payable, the plaintiff presented the same at the Bank of the State of Missouri, and demanded payment thereof, but said James Sigerson did not nor would pay or provide for the same, or pay any part thereof, of all which defendant then and there had due notice, to wit, at the district aforesaid, and in consideration thereof,

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the defendant afterwards, to wit, on the thirteenth day of March, 1854, at the district aforesaid, undertook and faithfully promised to pay the said sum of money, with damages, interest, and costs, to said plaintiff when he, the said defendant, should be thereto afterward requested.

And whereas also the said James Sigerson, heretofore, to wit, on the tenth day of March, 1852, at the district aforesaid, made his certain other promissory note in writing of that date, which now is here produced and shown to the court, and thereby promised to pay to the order of said John Sigerson, for value received, two years after said date, two thousand dollars, with interest from date at six per cent. per anuum, negotiable and payable, without defalcation or discount, at the Bank of the State of Missouri, and delivered the said note to the defendant, who then and there negotiated the same by endorsing and delivering it for value to the plaintiff, and afterwards, and before the maturity of said note, said James Sigerson departed this life insolvent, and said defendant in consideration thereof, expressly dispensed with the necessity of the defendant's making any demands of the legal representatives of said James Sigerson, in respect of said note, and promised to pay the same when due; all which was done before the maturity of said note; and the plaintiff relying on said dispensation, and said agreement and promise, did not present the said note to the said James Sigerson's legal representatives when the same became due and payable, to wit, on the thirteenth day of March, 1854, but withheld the same, and thereof notified the defendant, who afterwards, to wit, on the 20th day of March, 1854, at the district aforesaid, in consideration of the premises, undertook and promised the said plaintiff to pay him the said sum of money in said note specified, and interest and damages, when the said defendant should be thereto afterwards requested.

And whereas also, on the 10th day of March, 1852, the said James Sigerson made his certain other promissory negotiable note of that date, and thereby promised to pay to the order of the defendants, two years after said date, the sum of two thousand dollars, with interest from date at six per cent. per annum till paid, for value received, negotiable and payable, without defalcation or discount, at the Bank of the State of Missouri, and delivered said note to the defendant, who then and there negotiated the same, by endorsing it and delivering it for value to the plaintiff. And afterwards, and before the maturity of said note, said James Sigerson departed this life insolvent, having previous to his death conveyed all his property and effects to said John Sigerson, who was the brother of said James Sigerson, and said James Sigerson died intestate and without issue; and after the said James Sigerson had departed this life, and before the maturity of said note, the said plaintiff inquired of said defendant whether it was desired by him, said defendant, that said plaintiff should proceed to cause adminis-

tration to be taken out to said James Sigerson, and to prosecute his administrator for said debt; and said defendant waived the necessity of any such proceeding on the part of said plaintiff, and promised that he, the said defendant, would, in consideration of an agreement to that effect with the said James Sigerson, and in consideration of said plaintiff taking no steps to cause administration to be taken out to said James Sigerson as aforesaid, protect and pay said note at maturity, without requiring any formal demand of payment thereof from the legal representatives of James Sigerson; and said James Sigerson had no house or place of abode in St. Louis, Missouri, or elsewhere, at the time of his death, but was only a temporary sojourner with his brother at that time; and at the time of the maturity of said note there was not, nor is there now, any administrator of said James Sigerson; and the plaintiff, relying on the promises and assurances as aforesaid of the said defendant, did not make any presentment of said note for payment to any one on the 13th day of March, 1854, when said note became due and payable, and thereof notified the said John Sigerson afterwards, to wit, on the 14th day of March, 1854, at the district aforesaid; and the said defendant, on the day and year last aforesaid, at the district aforesaid, in consideration of the premises, undertook and faithfully promised to pay to the said plaintiff the said sum of money in said note mentioned, and damages and interest, when he should be thereunto afterwards requested; and said plaintiff now brings into court the said note endorsed as aforesaid, and shows the same to the court here.

And whereas also said defendant, heretofore, to wit, on the fourteenth day of March, 1854, at the district aforesaid, accounted together of and concerning certain moneys before that time due and owing from said defendant to said plaintiff, and upon such accounting it appeared that said defendant was indebted to the said plaintiff in the sum of three thousand dollars, and being so found indebted, the said defendant, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, in consideration thereof, undertook and faithfully promised to pay to said plaintiff the said sum of money when he, said defendant, should be thereto afterwards requested.

Nevertheless, the said John Sigerson, although often requested, has not yet paid to the said plaintiff the said several sums of money or any of them, but to pay the same hath hitherto altogether refused, to the damage of the plaintiff in the sum of ten thousand dollars; wherefore he sues.

THOS. T. GANTT,
P. B. GARESCHE, } *Pq.*

And afterwards, on the tenth day of March, A. D. 1856, there was issued a summons on said declaration from the office of our said clerk, as follows:

Summons.

MISSOURI DISTRICT, *set:*

The President of the United States, to the marshal of the Missouri district, greeting:

You are hereby commanded to summon John Sigerson, a citizen of the State of Missouri, that he be and appear before the honorable circuit court of the United States for the district of Missouri, on the first day of the next term thereof, to be holden at the city of St. Louis, in and for said district, on the first Monday of April next, then and there to answer unto Edward Mathews, a citizen of the State of Louisiana, in a plea of trespass on the case on promises, to the damage of said plaintiff ten thousand dollars. Hereof fail not, and have you then there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Su-
[SEAL.] preme Court of the United States, the tenth day of March, A. D. eighteen hundred and fifty-six.

Issued at office in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

BEN. F. HICKMAN,
Clerk.

And on said summons is endorsed a return, viz:

Return.

I hereby certify that I served the within summons on John Sigerson, by offering to read the same, together with a copy of the declaration thereto attached, which he declined hearing read, and I permitted him to read it for himself, on the 13th day of March, 1856, at St. Louis, Mo., of which he took a memorandum,

THOMAS S. BRYANT.
U. S. Marshal Mo. Dist.
By J. M. BYRANT,
Deputy Marshal.

And afterward, at the April term of our said court, for the year of our Lord eighteen hundred and fifty-six, on Wednesday, the ninth day of April, A. D. 1856, was had the following proceeding:

Plea filed.

EDWARD MATHEWS, plaintiff,
agst. } Assumpsit.
JOHN SIGERSON, defendant.

This day come the defendant, by his attorney, and files his plea of non-assumpsit in this case.

And said plea is as follows, viz:

Plea non-assumpsit.

EDWARD MATHEWS
agst.
JOHN SIGERSON. } Plea non-assumpsit.

And the said John Sigerson, defendant in this suit, by his attorney, comes and defends the wrong and injury, when, &c., and says he did not undertake and promise, in manner and form as the said plaintiffs in this suit hath above thereof declared against the said defendant, and of this he puts himself upon the country; and the said plaintiff likewise, &c.

KRUM & HARDING,
Attorneys for Defendant.

And afterward, at the same term of our said court, on Saturday the 17th May, 1856, this suit was continued.

And afterwards, to wit, at the October term of our said court, for the year 1856, on Wednesday, October 8th, 1856, was had the following proceeding:

Jury and trial.

EDWARD MATHEWS, plaintiff,
agst.
JOHN SIGERSON, defendant. } Assumpsit.

This day come the parties, by their attorneys, and both parties being ready for trial, it is ordered that a jury come, and thereupon come said jury, as follows: Albert G. Blakey, R. C. Henry, Lewis Lamkin, John Smedley, D. Huner, D. C. Hewitt, H. S. Freary, Lewis Vasques, S. D. Patterson, A. Morris, A. Schwartzott, and McDaniel Dorris, who were elected, tried, and sworn well and truly to try the issue joined in this case; and the evidence in part heard but not being concluded at the hour of adjournment, further proceedings herein are continued until to-morrow morning.

And afterwards, Thursday, October 9th, 1856:

Dismission of 4th count.

EDWARD MATHEWS, plaintiff,
agst.
JOHN SIGERSON, defendant, } Assumpsit.

This day come again the parties, by their attorneys, and the jury sworn herein being present, and the evidence on both sides being concluded, the plaintiff, by his attorney, with the leave of the court,

voluntarily dismisses the fourth and last count of his declaration herein, and relies for a recovery upon the first, second, and third counts of said declaration; and the arguments of counsel being heard, the jury retired to their room to consult of their verdict.

And afterwards, on Friday, October tenth, at the same term of our said court, was had the following proceeding:

Verdict and judgment.

EDWARD MATHEWS, plaintiff,
agst.
JOHN SIGERSON, defendant. } Assumpsit.

This day come again the parties, by their attorneys, and also the jury sworn herein, who being all present, returned into court the following verdict: "We, the jury, find for the plaintiff, and assess the damages at the sum of twenty five hundred and fifty dollars, $2,550.) R. C. Henry, foreman." It is therefore now considered by the court that the plaintiff, Edward Mathews, recover against the defendant, John Sigerson, the sum of twenty-five hundred and fifty dollars, the damages aforesaid by the jury assessed, and also the costs herein expended, and that execution issue therefor.

And afterwards, to wit, at the same term of said court, on the 11th day of October, 1856, was had the following proceeding:

Mo. for new trial.

EDWARD MATHEWS, plaintiff,
agst.
JOHN SIGERSON, defendant. } Assumpsit.

This day comes the defendant, by his attorney, and files herein his motion to set aside the verdict of the jury, and the judgment rendered herein, and to grant him a new trial, upon the grounds and for the reasons set forth in said motion.

And afterward, to wit, at the same term of said court, on Tuesday, October 21st, 1856, was had the following proceeding:

Motion to set aside, and motion overruled.

EDWARD MATHEWS, plaintiff,
agst.
JOHN SIGERSON, defendant. } Assumpsit.

This day come the parties, by their attorneys, and the court having examined the motion filed herein, to set aside the verdict and judgment herein, and to grant him a new trial, and being advised of and concerning the same, now orders that said motion be and the same is hereby overruled.

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And afterwards, at the same term of said court, on Friday, November 14th, 1856, was had the following proceeding:

Bill of exceptions filed.

EDWARD MATHEWS, plaintiff, } Assumpsit.
agst.
JOHN SIGERSON, defendant. }

This day come the defendant, by his attorney, and files herein his bill of exceptions, signed and sealed by the court, and the same is ordered to be made part of the record.

And said bill of exceptions is in the words and figures following:

Bill of exceptions.

IN THE U. S. CIRCUIT COURT FOR MO.

October term, 1856.

EDWARD MATHEWS }
agst.
JOHN SIGERSON. }

Wilson.

Be it remembered that, at the trial of this cause, the plaintiff called as a witness John D. Wilson, who testified that he knew the parties to this action, and was also acquainted with the handwriting of James and John Sigerson, and that the note sued on was signed by James Sigerson and endorsed by John Sigerson. Witness was then asked if he knew the transactions out of which the note grew, and replied that he did; that he was in 1851 and 1852 clerk of Edward Mathews. Being desired by plaintiff's counsel to state those transactions, the defendant's counsel objected to the testimony sought to be elicited, as incompetent and irrelevant; but the court overruled the objection, and permitted the witness to answer the question, and the defendant excepted to the opinion of the court in so doing.

Witness then, in answer to the question objected to by defendant above, testified that in 1851 Edward Mathews advanced largely to John Sigerson on some transactions in pork; that thereby John Sigerson became indebted to Edward Mathews; that the account between them was brought to a settlement on 10 March, 1852; that there was against Sigerson a balance exceeding two thousand dollars; that this balance was payable in cash; that John Sigerson wanted two years time; that Edward Mathews thereupon demanded real estate security; that John Sigerson offered to give the note of his brother James, endorsed by him, instead of real estate security,

representing that James was the owner of valuable real estate in St. Louis county, in the Carondelet Common; that this offer was after some discussion accepted by Mathews; that the note now sued on was given to Mathews about 10 April, 1852, but the note was dated 10th March, 1852, which was the date of the settlement, and a receipt was given for the note at the foot of the statement of the account between Sigerson and Mathews.

On a cross-examination he stated that Watson Mathews was, during the years 1851 and 1852, the agent of Edward Mathews at this city; that Edward Mathews resided then with his family at New Orleans, La. Witness did not know where Edward Mathews has resided since he removed from New Orleans. He had been traveling a good deal and was an itinerant man. He failed in business in December, 1854, or January, 1855, at that time he was here on a visit with his family. Witness learned from John Sigerson, that his brother James was the owner of a large and valuable farm in the Common of Carondelet; witness had never heard Edward Mathews say that he had assigned this note, nor did witness know such to be the fact from any other source.

Elder.

Joseph E. Elder a witness for the plaintiff, testified that he had seen the note in controversy before; that it was sent to him by Edward Mathews for collection some time in the fall of 1852; thinks it was soon after the death of James Sigerson that he received it; it was before the maturity of the note. Witness called on John Sigerson and asked him if he should have it probated against the estate of James Sigerson. John Sigerson replied that he (witness) need not do so, and that the note would be paid at maturity. Witness then placed the note in his portfolio, and there it remained until it was over-due. Witness, after the note was over-due, called on John Sigerson at his office, informed him that he had neglected putting the note in for collection, and asked him what he was going to do; he said he would see witness in a few days and arrange it; this was all that occurred on that occasion. This interview took place at the office of Mr. John Sigerson, on Broadway. The day afterwards, John Sigerson called on witness at his counting-room, and was then accompanied by a person named Taylor.

On cross-examination witness stated that he received this note from Mathews after the death of James Sigerson; could not say how long before the note was due; there was a trial about this note before the St. Louis circuit court; that trial took place within the last twelve months. Witness said he was sure that Mathews sent him the note after the death of James Sigerson; could not remember what he said on this subject at the former trial, or whether he said anything. If he said anything, presumes that he said the same that he now says. Witness believed that James Sigerson died

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in the summer or fall of 1852. Witness had two interviews with Sigerson on the subject of the note—one before its maturity, and another after its maturity. In the one after its maturity, which was some three or four weeks thereafter, he said that he would call and arrange it. It was before the note became due that he said it was not necessary for me to probate it. Did not recollect saying to Mr. Sigerson when he called to see witness in company with Mr. Taylor, that if he did not pay the note, it would put him, witness, in an awkward situation with respect to Mathews; once upon 'change witness used some such language to John Sigerson. Witness would have put the note in bank for collection and had it probated, if he had not forgotten it.

Witness stated that he failed in business in December, 1854, or January, 1855. Witness said that when Mathews failed, he was in debt to witness, according to witness' books; but it was afterwards ascertained that there was an error in witness' books, and Mathews claims that witness is indebted to him. The note was sent to witness to collect on account of Mathews. Did not recollect any conversation with Mathews on the subject of the note, when he, Mathews, was here in 1854–5, nor when he was here last, which was in May or June, 1856. Witness believed the note belonged to Edward Mathews and to *one else;* witness had no claim on it or its proceeds, and was not interested in this suit. Witness had not settled his account with Mathews. Witness could not state whether Mathews knew of this suit. He knew there was a suit pending against Sigerson, but whether he knew of this particular suit he could not say. There had been a former suit in the State court on the note. The plaintiff then read in evidence the note and the endorsement thereof, in the words and figures following:

Note.

$2,000. ST LOUIS, *March 10th*, 1852.

Two years after date, I promise to pay to the order of John Sigerson two thousand dollars, for value received, without defalcation or discount, negotiable and payable at Bank of the State of Missouri, with interest from date at six per cent. per annum.

(Signed,) JAMES SIGERSON.

Endorsement.

And on said note is endorsed, viz: "John Sigerson."

And also the receipt given by Watson Mathews therefor, in the words and figures following: said receipt having been proved by John D. Wilson, in the words and figures following:

Receipt for Note.

Received, St. Louis, April, 61852, of Mr. John Sigerson, James

Sigerson's note to the order of John Sigerson, and by him endorsed, dated March 10th, 1852, at two years date, for two thousand dollars, bearing interest at 6 per cent. per annum, being in full for balance of account due Edward Mathews as per account rendered 10 ulto.

$2,000. EDWARD MATHEWS,
by WATSON MATHEWS,
his att'y in fact.

And rested.

Taylor.

The defendant then called as a witness John D. Taylor, who testified that he knew Joseph E. Elder; that he was in defendant's employ from 1848 to 1854 as book-keeper, and that in April, 1854, at the request of Mr. John Sigerson he accompanied him to the office of Elder on Commercial street. Witness went with John Sigerson to be a witness of what passed between him and Elder. Sigerson said to Elder, that he had called on him for the purpose of seeing the paper of which Elder had spoken to him the day before; Elder produced the note now sued on; Sigerson then said that he called on him for the purpose of saying that he did not consider himself in any wise liable on the note, because it had not been protested for non-payment, and that he considered himself released.

Elder said that he regretted very much that Sigerson should take that position; that it placed him in an unpleasant position towards Mathews for having neglected to have the note protested, and he presumed he was responsible to Mathews for the neglect. Sigerson replied that it was no fault of his; that Elder had his recourse upon the estate of James Sigerson. Elder then said that if he could not recover it from the estate of James Sigerson, he presumed he would have to pay it himself. Witness was book-keeper of John Sigerson, and had charge of his books, and was generally in his office during business hours, but never saw Mr. Elder there. Witness did not know to whom the note now sued on belongs.

On cross-examination, witness said that James Sigerson died in September, 1852, and that for the last six years of his life James Sigerson had been engaged in the nursery business on his farm. The farm was part of the Carondelet Common, and contained about one thousand acres. It was south of the river Des Peres. In the month of February, 1852, John Sigerson sold his interest in this farm to James Sigerson. James was to pay off the incumbrances, which amounted to about $16,000, on the land, and to pay $40,000 to John Sigerson. He executed twenty notes to John Sigerson, each for ($2,000) two thousand dollars, payable in 6, 12, 18 months, and so on, with intervals of six months, and John Sigerson made him a deed. These notes were not dated. John Sigerson was to

date them as he wanted to use them. The notes were not secured by deed of trust. In July, 1852, James reconveyed the whole of the land back to John, and the bargain was rescinded. This was because James had not fulfilled his contract with John in respect of the land. Nineteen of the notes were given up. The note now sued on was outstanding, and James was credited for it on John's books. James was then indebted to John in the sum of upwards of six or seven thousand dollars, and died so indebted. James left no property, real or personal, so far as witness knew. He was unmarried. No administration was taken out on his estate. All the property which James had in Missouri was conveyed to John by the deed made in July, 1852. (Being shown the certified copy of the deed, witness recognized the description and identified it.) The purchase of John's interest by James included the ground, nursery, stock, and improvements on the land. The whole concern was then worth, in the opinion of witness, $100,000. It is worth much more now. All of these passed from John to James by the sale of February, 1852, and back again from James to John by the sale and deed of July, 1852.

Plaintiff then read in evidence the deed from James Sigerson to John Sigerson, dated July , 1852, in the words and figures following:

Deed.—J. Sigerson to Jno. Sigerson.

This deed, made on the thirteenth day of July, eighteen hundred and fifty-two, by and between James Sigerson, of the county of St. Louis and State of Missouri, party of the first part, and John Sigerson, of the city of St. Louis and State of Missouri, party of the second part, witnesseth: That the said party of the first part, in consideration of the sum of forty thousand dollars to him paid by the party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain, and sell, convey and confirm unto the said party of the second part, his heirs and assigns, all those several lots, pieces, and parcels of land situate in the county of St. Louis and State of Missouri aforesaid, being lots numbered four, (4,) five, (5,) six, (6,) thirty-seven, (37,) thirty-eight, (38,) thirty-nine, (39,) forty, (40,) forty-one, (41,) forty-two, (42,) forty-six, (46,) forty-seven, (47,) forty-eight, (48,) forty-nine, (49,) fifty, (50,) fifty-one, (51,) fifty-two, (52,) eighty, (80,) eighty-one, (81,) eighty-two, (82,) eighty-three, (83,) eighty-four, (84,) eighty-five, (85,) ninety-three, (93,) and ninety-four (94) of the subdivision of the Common of Carondelet, south of the river Des Peres, containing nine hundred and sixty acres, be the same more or less: To have and to hold the same, with all the rights, immunities, privileges, and appurtenances hereunto belonging, unto the said party of the second part, and his heirs and assigns, forever—the said James Sigerson hereby covenanting that

he, his heirs, executors, and administrators, shall and will warrant and defend the title to the said premises, unto the said party of the second part, his heirs and assigns, forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

JAMES SIGERSON, [SEAL.]

Signed, sealed, and acknowledged in presence of the undersigned:

A. GAMACHE.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this thirteenth day of August, eighteen hundred and fifty-two, before me, the undersigned, a justice of the peace within and for the county and State aforesaid, came James Sigerson, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and he acknowledged the same to be his act and deed, for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

AUGUSTE GAMACHE,
Justice of the Peace.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder in and for said county, certify that the foregoing instrument of writing was filed for record in my office, Oct. 1st, 1852, and is truly recorded in Book K. 6, p. 236.

Witness my hand and official seal, the date aforesaid.

S. D. BARLOW, [SEAL.]
Recorder.

And this was all the testimony in the cause.

And thereupon the defendant prayed the court to instruct the jury as follows:

Instructions asked by the defendant.

The plaintiff cannot recover in this action upon the note in question, unless the jury shall believe from the evidence that said note was made by James Sigerson for the accommodation of the defendant, and that the defendant, at the time he endorsed and delivered said note to the plaintiff, had not good reason to believe that it would be paid by the maker when it should become due; or, unless the jury shall believe from the evidence that the defendant, after said note had become due, promised unconditionally that he would

pay it, and that at the time of making such promise he knew or had been informed that said note when it became due had not been presented, nor payment thereof demanded at the Bank of the State of Missouri.

If the note in question was given for a part of the consideration of land and other property sold by the defendant to James Sigerson, then it is not an accommodation note, and the defendant is not liable in this action as endorser of said note, unless the jury believe from the evidence that he promised unconditionally, after said note became due, that he would pay it, and that he knew at the time he made such promise that said note, when it became due, had not been presented, nor payment thereof demanded at the Bank of the State of Missouri.

And the plaintiff also offered instructions, and prayed the court to give the same to the jury; but the court refusing to give the said instructions, did instruct the jury as follows:

Instructions given by the court.

"If the jury believe from the evidence that the defendant, before the maturity of the note, in conversation with the agent of the plaintiff, dispensed with a presentation of the note for payment and demand of payment, and promised to pay the note, or procure or provide for its payment at maturity, he cannot now set up as a defence to this suit that said note was not presented for payment and demand made therefor, and that he received no notice of the dishonor of the note.

"If, after the maturity of the note, the defendant promised the plaintiff or his agent to pay the same, having at the time of making said promise knowledge of the fact that said note had not been presented for payment nor payment demanded, nor any notice given or sent thereof, he, the defendant, cannot now set up as a defence to said note that it was not so presented, and payment demanded and notice given.

"If the defendant neither dispensed with the presentation and demand of payment of said note and notice thereof, nor promised to pay the same, having knowledge as aforesaid as above stated, then the plaintiff cannot recover in this action."

And to the refusal by the court to give the instructions asked by the defendant, and to the giving by the court of the instructions actually given, the defendant at the time excepted.

There was a verdict for the plaintiff, and the defendant, within four days, filed the following motion to set the same aside:

Motion to set aside the verdict and grant new trial.

EDWARD MATHEWS }
vs.
JOHN SIGERSON. }

The defendant in this cause, comes and moves the court to set

aside the verdict of the jury in this cause, and to grant a new trial for the reasons following:

1st. The court admitted illegal and incompetent testimony offered by plaintiff, and which was objected to by defendant.

2d. The court excluded legal and competent testimony offered by defendant.

3d. The court refused to give legal and proper instructions, asked to be given to the jury by the defendant.

4th. The court misdirected the jury by its instructions and charge to them.

KRUM & HARDING,
Att'ys for Def't.

Which motion the court overruled, and defendant excepted thereto and presented this bill of exceptions, and prayed that it be signed and sealed, and made part of the record, which is done.

R. W. WELLS, [SEAL.]

And afterward, to wit, at the October term, 1856, of our said court, on the 21st day of November, 1856, was had the following proceeding.

Superseded bond approved, &c.

EDWARD MATHEWS, plaintiff,
agst.
JOHN SIGERSON, defendant. } Assumpsit.

This day come the parties by their attorneys, and the defendant's attorney produced in court the bond executed by him on the twenty-seventh day of October, 1856, upon the issuing of the writ of error herein, which bond was approved by the judge of this court, and which is now, with the consent of the plaintiff's attorney, received as the supersedeas bond herein, as if now executed; and on the motion of the defendant, by his said attorney, it is ordered that the execution awarded upon the judgment herein be suspended and stayed until the action of the Supreme Court of the United States in this case, to which Court said case has been transferred by writ of error, allowed by the judge of this court.

And said bond and endorsements is as follows:

Supersedeas Bond.

Know all men by these presents, that we, John Sigerson, and William Sigerson, and Anapius Rice, are held and firmly bound unto Edward Mathews, in the full and just sum of six thousand dollars, to be paid to the said Edward Mathews, his certain attorney, executors, and administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and

administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas at the October term of the circuit court of the United States for the district of Missouri, in a suit depending in said court between Edward Mathews, plaintiff, and John Sigerson, defendant, judgment was rendered against the said John Sigerson, for the sum of twenty-five hundred and fifty dollars and costs, and the said John Sigerson having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Edward Mathews, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said John Sigerson shall prosecute his said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

JOHN SIGERSON, [SEAL.]
WILLIAM SIGERSON, [SEAL.]
ANAPIUS RICE, [SEAL.]

Acknowledged before me this 27th day of October, 1856.

BEN. F. HICKMAN,
Cl'k C. C. U. S. Mo. Dis.

William Sigerson being sworn, says, that after the payment of his justs debts and liabilities, he is worth the sum of six thousand dollars—the penalty in the within bond.

WILLIAM SIGERSON.

Subscribed and sworn to before me this 27th day of October, 1856.

BEN. F. HICKMAN,
Cl'k C. C. U. S. Mo. Dis.

Anapius Rice being sworn, says, that after the payment of his just debts and liabilities, he is worth the sum of six thousand dollars—the penalty in the within bond.

BEN. F. HICKMAN,
Cl'k C. C. U. S. Mo. Dis.

Approved by me.

R. W. WELLS.

I, Benjamin F. Hickman, clerk of the circuit court of the United States for Missouri district, do certify that the foregoing twenty pages, contain a correct and complete transcript of the record and proceedings of said court, in a case therein decided, wherein Edward Mathews was plaintiff and John Sigerson was defendant, as fully as the same remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name, and affix the seal of said court. Done at office, in St. Louis, this 19th day of December, A. D. 1856.

[SEAL.]

BEN. F. HICKMAN,
Clerk.

UNITED STATES OF AMERICA,
Missouri District, ss:

The President of the United States, to the honorable Robert W. Wells, district judge of the United States for Missouri district, and one of the judges of the circuit court of the United States for the Missouri district, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the October term, 1856, thereof, between Edward Mathews plaintiff, and John Sigerson, defendant, a manifest error hath happened to the great damage of the said defendant, John Sigerson, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and fifty-six. Issued at office in city of St. Louis, with the seal of the circuit court of the United States for Missouri district, date last as above written.

[SEAL.]

BEN. F. HICKMAN,
Clerk.

Allowed by me.

R. W. WELLS.

In obedience to the within writ, I herewith return to the Supreme Court of the United States a full and complete transcript of the record and proceedings of the U. S. circuit court for Missouri district, in the case within mentioned, wherein Edward Mathews was plaintiff and John Sigerson defendant, openly and distinctly, as fully as the same remain on file and of record in my office.

Given under my hand this 19th day of December, 1856.

BEN. F. HICKMAN,
Clerk.

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THE UNITED STATES OF AMERICA:

To Edward Mathews, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for Missouri district, wherein John Sigerson is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert W. Wells, district judge of the United States for Missouri district, and one of the judges of the circuit court of the United States for the said district, this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and fifty six.

R. W. WELLS.

I admit service of this writ, this 21st day of November, 1856.

THOS. T. GANTT,
Att'y for Edward Mathews.